

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 60 - HB 386

March 20, 2013

SUMMARY OF BILL: Redefines “criminal gang offense” to mean the commission, attempted commission, solicitation, coercion, or intimidation of another to commit any offense under title 39, chapters 13, 14, 16, or 17; or any criminal offense, anywhere, that involves violence, the use of a deadly weapon, or the possession of a deadly weapon.

Creates a new Class E felony for anyone employed or associated with a criminal gang to knowingly participate in criminal activity. Provides that association with a criminal gang may be established through common names, common identifying signs, symbols, tattoos, etc. A violation of the subsection is either a Class E felony or subject to the enhancement provisions of Tenn. Code Ann. § 40-35-121, whichever is greater.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – \$8,800/One-Time
\$104,900/Recurring
\$8,679,400/Incarceration*

Assumptions:

Assumptions Relative to Knowingly Participating in Criminal Activity:

- The bill creates a Class E felony for a gang member to knowingly participate in criminal activity.
- According to the Department of Correction (DOC), the Governor’s Public Safety Forum on Tennessee Gangs in 2012 estimated that there are approximately 25,000 gang members in Tennessee. According to the DOC, 26 percent of felons in DOC custody are documented as gang-affiliated. This is approximately 5,116 inmates. The DOC assumes that three percent of these inmates ($5,116 \times 0.03 = 154$ inmates) would be convicted of knowingly participating in criminal activity under the proposed legislation, a Class E felony.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2013 is \$64.17.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for 18 ($154 \times .1178$) additional admissions for a total of 172 ($154 + 18$).
- According to the DOC, 33.75 percent of offenders will re-offend within one year of their

release. A recidivism discount of 33.75 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (172 offenders x .3375 = 58 offenders).

- The average time served for a Class E felony is 1.21 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 114 offenders [172 offenders – 58 (recidivism discount)] serving 1.21 years (441.95 days) for a total of \$28,360 (\$64.17 x 441.95 days). The cost for 114 offenders is \$3,233,040 (\$28,360 x 114).

Assumptions Relative to Criminal Gang Offenses:

- Under current law, a “criminal gang offense” is any offense during the perpetration of which the defendant knowingly causes, or threatens to cause, death or bodily injury. The bill would broaden the definition to include no less than 396 felonies, including attempts and solicitations. The felonies affected include:
 - Approximately 75 Class B felonies, for which the 10-year average admissions are 2,180.5 admissions per year;
 - Approximately 101 Class C felonies, for which the 10-year average admissions are 4,179 admissions per year;
 - Approximately 92 Class D felonies, for which the 10-year average admissions are 2,827.5 admissions per year; and
 - Approximately 128 Class E felonies, for which the 10-year average admissions are 2,166.8 admissions per year.
- It is assumed that one percent of these admissions were committed by a criminal gang member and would be sentenced at one classification higher.

Assumptions Relative to Class B Felonies:

- The bill would result in 22 Class B felonies ($2,180.5 \times 0.01 = 22$) being enhanced to Class A felonies.
- Population growth will account for three additional admissions ($22 \times .1178$) for a total of 25 ($22 + 3$).
- According to the DOC, 49.11 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.11 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (25 offenders x .4911 = 12 offenders).
- The bill would result in each offender serving an additional 10.49 years (15.78 years, the average time served for a Class A felony – 5.29 years, the average time served for a Class B felony).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 13 offenders [25 offenders – 12 (recidivism discount)] serving an additional 10.49 years (3,831.47 days) for a total of \$245,865 (\$64.17 x 3,831.47 days). The cost for 13 offenders is \$3,196,245 (\$245,865 x 13).

Assumptions Relative to Class C Felonies:

- The bill would result in 42 Class C felonies ($4,179 \times 0.01 = 42$) being enhanced to Class B felonies.
- Population growth will account for five additional admissions ($42 \times .1178$) for a total of 47 ($42 + 5$).
- According to the DOC, 43.36 percent of offenders will re-offend within two years of their release. A recidivism discount of 43.36 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($47 \text{ offenders} \times .4336 = 20 \text{ offenders}$).
- The bill would result in each offender serving an additional 2.31 years (5.29 years, the average time served for a Class B felony – 2.98 years, the average time served for a Class C felony).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 27 offenders [$47 \text{ offenders} - 20 \text{ (recidivism discount)}$] serving an additional 2.31 years (843.73 days) for a total of \$54,142 ($\$64.17 \times 843.73 \text{ days}$). The cost for 27 offenders is \$1,461,834 ($\$54,142 \times 27$).

Assumptions Relative to Class D Felonies:

- The bill would result in 28 Class D felonies ($2,827.5 \times 0.01 = 28$) being enhanced to Class C felonies.
- Population growth will account for three additional admissions ($28 \times .1178$) for a total of 31 ($28 + 3$).
- According to the DOC, 33.75 percent of offenders will re-offend within one year of their release. A recidivism discount of 33.75 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($31 \text{ offenders} \times .3375 = 11 \text{ offenders}$).
- The bill would result in each offender serving an additional 1.18 years (2.98 years, the average time served for a Class C felony – 1.80 years, the average time served for a Class D felony).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 20 offenders [$31 \text{ offenders} - 11 \text{ (recidivism discount)}$] serving an additional 1.18 years (431 days) for a total of \$27,657 ($\$64.17 \times 431 \text{ days}$). The cost for 20 offenders is \$553,140 ($\$27,657 \times 20$).

Assumptions Relative to Class E Felonies:

- The bill would result in 22 Class E felonies ($2,166.8 \times 0.01 = 22$) being enhanced to Class D felonies.
- Population growth will account for three additional admissions ($22 \times .1178$) for a total of 25 ($22 + 3$).
- According to the DOC, 33.75 percent of offenders will re-offend within one year of their release. A recidivism discount of 33.75 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the

additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (25 offenders x .3375 = 8 offenders).

- The bill would result in each offender serving an additional 0.59 years (1.80 years, the average time served for a Class D felony – 1.21 years, the average time served for a Class E felony).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 17 offenders [25 offenders – 8 (recidivism discount)] serving an additional 0.59 years (215.5 days) for a total of \$13,829 (\$64.17 x 215.5 days). The cost for 17 offenders is \$235,093 (\$13,829 x 17).

Assumptions Relative to the Total Incarceration Cost:

- The total incarceration cost is \$8,679,352 (\$3,233,040 + \$3,196,245 + \$1,461,834 + \$553,140 + \$235,093).

Assumptions Relative to the Courts, District Attorneys, and Public Defenders:

- The District Attorneys General Conference (DAGC) would need one additional assistant district attorney (ADA) to handle the number of convictions this bill would result in.
- It is assumed that the ADA will be hired at an entry level position with a salary of \$40,400. It is assumed that the ADA will require one-time expenditures for equipment in the amount of \$4,400.
- The bill will result in recurring expenditures of \$52,471 [\$40,400 salary + (\$40,400 x .1503 benefits) + \$5,999.28 insurance].
- The District Public Defenders Conference (DPDC) would need one additional public defender to handle the number of indictments this bill would result in.
- It is assumed that the new public defender will be hired at entry level positions with a salary of \$40,400. It is assumed that the public defender will require one-time expenditures for equipment in the amount of \$4,400.
- The bill will result in recurring expenditures of \$52,471 [\$40,400 salary + (\$40,400 x .1503 benefits) + \$5,999.28 insurance].
- The total one-time increase in expenditures for the two positions is \$8,800 (\$4,400 + \$4,400) and the total recurring expenditures for the positions is \$104,942 (\$52,471 + \$52,471).
- Though the bill will increase the caseloads of the courts, it is assumed that any impact can be accommodated within existing resources.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

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